

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SAMIAM GROUP, LLC

Plaintiff,

v.

COOPERSBURG ASSOCIATES, INC. dba
COOPERSBURG SPORTS

Defendant.

Case No. 22-cv-02256-JFL

**PLAINTIFF’S MOTION IN LIMINE
TO PRECLUDE DEFENDANT FROM
PRESENTING EVIDENCE OF OR
RELYING ON BASEBALL BATS AS
PRIOR ART**

SAMIAM GROUP, LLC files this Motion in Limine to preclude Defendant from presenting at trial including any testimony and/or exhibits relating to baseball bats or images of baseball bats, or otherwise arguing or suggesting that baseball bats are prior art in the context of this lawsuit. Baseball bats are not drinking vessels and are not prior art relevant to the issue of whether Defendant infringed Plaintiff’s design patent for drinking vessels. This Court has already ruled that baseball bats are not prior art. Because Plaintiff’s patent claim and Defendant’s accused product are both baseball bat-shaped drinking vessels, testimony, exhibits and images of baseball bats would tend to confuse the jury as to what prior art the jury may properly consider in deciding the issue of design patent infringement.

Evidence that is not relevant is inadmissible. Fed. R. Evidence 402. Evidence is not relevant when it does not have “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Fed. R. Evid. 401. Moreover, even relevant evidence should be excluded “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Fed. R. Evidence 403. Unfair prejudice is an “undue

tendency to suggest decision on an improper basis.” *Bhaya v. Westinghouse Elec. Corp.*, 922 F.2d 184, 188 (3d Cir. 1990) (citing Fed. R. Evid. 403 advisory committee’s note).

This is an action for the infringement of a design patent for a drinking vessel in the shape of a baseball bat. This Court has already ruled that Plaintiff’s asserted design patent is valid, that the issue of infringement must be presented to the jury and decided based on the ordinary observer test. *See* SJ Opinion (ECF #53).

Under the ordinary observer test, if the claimed and accused designs are not “plainly dissimilar,” infringement may be determined by comparing the claimed and accused designs with the prior art. *See Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 678 (Fed. Cir. 2008).

This Court has already ruled that “baseball bats do not qualify as prior art for the ‘498 patent.” *See* SJ Opinion at 13. That ruling is the law of the case, and continues to govern this action. *See Doe v. Dejoy*, 2021 U.S. Dist. LEXIS 72457, at *12 (E.D. Pa. Mar. 1, 2021) (Leeson, J.) (discussing the law of the case doctrine).

In spite of that ruling, Defendant intends to elicit testimony related to and submit samples and/or images of baseball bats to the jury for consideration in its deliberation of the infringement issue. Specifically, Defendant intends to elicit testimony related to and submit samples and/or images of baseball bats to the jury of specimens or images of the CSX Bat, The Louisville Slugger Replica Bat and Ball Combo and the Easton Pro Stix 1000 Baseball Bat. *See* Defs. Exhs. D-2, D-4, and D-5 (attached).¹

Plaintiff respectfully requests that Defendant be precluded from eliciting any testimony and/or exhibits relating to baseball bats or images of baseball bats, or otherwise arguing or

¹ A better image of the actual CSX Bat, obtained from Defendant’s own website, is attached immediately after D-2. *See* <https://www.coopersburgsports.com/products/dodgers-csx-bat-display> (last accessed Jan. 22, 2023).

suggesting that baseball bats are prior art in the context of this lawsuit. As this Court has already recognized, baseball bats are not drinking vessels and are not prior art relevant to the issue of whether Defendant infringed Plaintiff's patented drinking vessel design.

Evidence relating to the CSX Bat, The Louisville Slugger Replica Bat and Ball Combo, the Easton Pro Stix 1000 Baseball Bat and any other baseball bat is not relevant to the decision of the jury on the issue of infringement because they are not prior art and would tend to confuse the jury as to what could properly be considered as part of the deliberation on the issue of infringement.

Respectfully submitted,

/s/ Robert L. Epstein, Esq.
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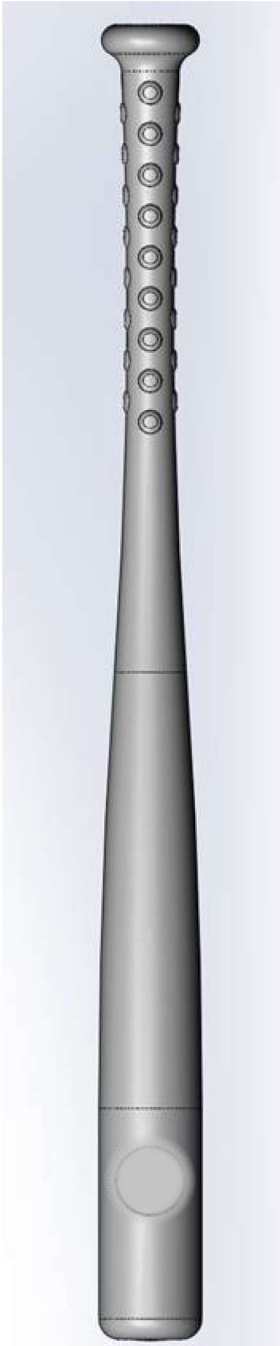
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TABLE OF EXHIBITS

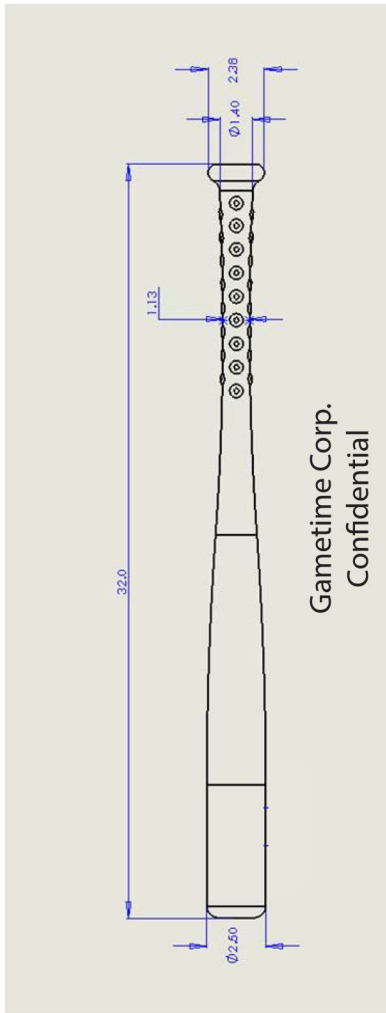
Documents with greyscale shading are Protected Documents and may be filed under seal.

Description of Document	Trial Exhibit #
Beverage Bat (photo in Exhibit – specimen submitted to the Court)	D-1
CBS0006 - Coopersburg Sports CSX Bat	D-2
The Beer Bat – Generation 1 (photo in Exhibit – specimen submitted to the Court)	D-3
Amazon.com product listing – Louisville Slugger Replica Bat and Ball Combo (specimen to be used in court)	D-4
Amazon.com product listing – Easton Pro Stix 1000 Baseball Bat (specimen to be used in court)	D-5
Side-by-Side Comparison of ‘498 Patent and the Beverage Bat	D-6
Letter dated May 28, 2021 from Robert Katz to Scott Pino	D-7
Email dated June 21, 2021 from Damon Neagle to Robert Katz	D-8
USPTO File History – US Patent Application No. 29/814,646	D-9
Correspondence from Coopersburg’s counsel to Samiam’s counsel regarding position on infringement	D-10
Summary of Beverage Bat Revenue and Expenses – (prepared by Collen Knauss)	D-11
CBS00592 – PO 3787	D-12
CBS00601 – Sales Order	D-13
CBS00617 - Invoice	D-14
CBS00377 – Customer Invoice	D-15
CBS00053-CBS00055 – Beverage Bat by Month Summary	D-16
Total labeling expenses for the Beverage Bat	D-17
Deposition of Samuel McGee on November 17, 2022 (Non-Confidential)	D-18
Deposition of Samuel McGee on November 17, 2022 (Confidential)	D-19
Deposition of Samuel McGee on November 17, 2022 (Confidential – Outside Counsel’s Eye’s Only)	D-20
Levy Letter dated December 4, 2019	D-21
Delaware North Email dated September 14, 2022	D-22
Plaintiff’s Responses to Defendant’s First Set of Interrogatories	D-23
The Beer Bat – Generation 2 (photo in Exhibit – specimen submitted to the Court)	D-24
Deposition of Scott Pino on November 17, 2022 (Non-Confidential)	D-25
Deposition of Scott Pino on November 17, 2022 (Confidential)	D-26
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USPTO File History – US Patent No. D888,498	D-28
Examples of Court Decisions Granting Summary Judgment of Non-Infringement	D-29
Markup of Differences between the ‘498 Patent and the Beverage Bat	D-30

CSX 32" BAT



Material: HDPE
Weight: 220 Grams



<https://www.coopersburgsports.com/products/dodgers-csx-bat-display>



amazon prime Deliver to Damon Orefield 18069 All plastic bat

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 Louisville Slugger Replica Bat and Ball Combo

Visit the Louisville Slugger Store

★★★★☆ 377 ratings


7 answered questions

Product details

Sport Type	Baseball
Brand	Louisville Slugger
Material	Plastic
Item Weight	0.6 Pounds
Age Range (Description)	Youth

- Exact replica of the genuine C271 34" big league baseball bat but made of plastic
- Authentic wood grain look
- Plastic baseball bat and ball are Made in USA
- Plastic ball included for safe play
- Great fun for backyard games

[Report incorrect product information.](#)



PowerNet 12 PK Crushers Limited

https://www.amazon.com/Louisville-Slugger-Replica-Bat-Combo/dp/B00BFNLYS8/ref=sr_1_21?crid=3VOTBWARPEGAA&keywords=plastic+bat&qid=1664569315&qu=eyJxc2MiOiI0LjcxiIwlcXNhIjoiNC4yNiIsInFzcCI6IjMuODgifQ%3D%3D&srefix=plastic+bat%2Caps%2C78&sr=8-21

Product Description**Product Description**

Louisville Slugger Replica Bat Combo includes an exact replica of the genuine C271 34" big league bat but made of plastic, and a safe plastic baseball for great backyard fun. The bat has an authentic wood grain look and is made in the USA.

From the Manufacturer

Louisville Slugger Replica Bat Combo includes an exact replica of the genuine C271 34" big league bat but made of plastic, and a safe plastic baseball for great backyard fun. The bat has an authentic wood grain look and is made in the USA.

Product information**Technical Details**

Item Package Dimensions L x W x H	32.99 x 2.99 x 2.99 inches
Package Weight	0.27 Kilograms
Item Weight	0.6 Pounds
Brand Name	Louisville Slugger
Material	Plastic
Manufacturer	GameMaster
Part Number	D50400
Sport Type	Baseball

Additional Information

ASIN	B00BFNLYS8
Customer Reviews	★★★★★ 377 ratings 4.6 out of 5 stars
Best Sellers Rank	#150,386 in Sports & Outdoors (See Top 100 in Sports & Outdoors) #14 in Plastic Bats #985 in Baseball Accessories
Date First Available	February 20, 2013

Feedback

Would you like to [tell us about a lower price?](#)

https://www.amazon.com/Louisville-Slugger-Replica-Bat-Combo/dp/B00BFNLYS8/ref=sr_1_21?crid=3VOTBWARPEGAA&keywords=plastic+bat&qid=1664569315&qu=eyJxc2MiOiI0LjcxiIwlcXNhIjoiNC4yNiIsInFzcCI6IjMuODgifQ%3D%3D&srefix=plastic+bat%2Caps%2C78&sr=8-21



https://www.amazon.com/Louisville-Slugger-Replica-Ball-Combo/dp/B00BFNLYS8/ref=sr_1_21?crid=3VOTBWARPEGAA&keywords=plastic+bat&qid=1664569315&qu=eyJxc2MiOiI0LjcxliwicXNhIjoiNC4yNiIsInFzcCI6IjMuODgifQ%3D%3D&srefix=plastic+bat%2Caps%2C78&sr=8-21

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★★★★☆ 1,453 ratings

| 26 answered questions

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\$16⁹⁹

prime

FREE Returns

Thank you for being a Prime member. Get a \$100 Gift Card: Pay \$0.00 upon approval for the Amazon Prime Rewards Visa Card. No annual fee.

May be available at a lower price from other sellers, potentially without free Prime shipping.

Product details

Size	33"
Sport Type	Games & toys
Brand	Easton

https://www.amazon.com/Easton-STIX-PLASTIC-BALL-Ages/dp/B001Q9RUFW/ref=asc_df_B001Q9RUFW?tag=bingshoppinga-20&linkCode=df0&hvadid=80058245652745&hvnetw=o&hvqmt=e&hvbmt=be&hvdev=c&hvlocint=&hvlocphy=&hvtargid=pla-4583657821993989&psc=1

Product Description

This great looking Easton Pro Stix Training Set will get your rising sports star into the swings of things. Modeled after a professional wood series bat, this high quality plastic rendition is great for a fun game of whiffle ball, backyard practice or a training drill. Whether for backyard or the field, the set is just perfect for anyone with a clear agenda aiming for the stardom.

Product information**Technical Details**

Size	33"
Sport Type	Games & toys
Brand	Easton
Material	Plastic
Color	Black
Item Weight	0.14 Pounds
Skill Level	All
Age Range (Description)	Kid, Youth, Adult
Item Package Dimensions L x W x H	39.5 x 5 x 2.25 inches
Package Weight	0.33 Kilograms
Item Dimensions LxWxH	34 x 20.1 x 11.5 inches
Brand Name	Easton
Country of Origin	United States
Model Name	Easton Pro Stix Training Set
Suggested Users	Unisex-adult unisex-child mens womens
Manufacturer	Easton Sports, Inc.
Part Number	XCZ-021
Included Components	Easton Pro Stix Training Set
Size	33"

Additional Information

ASIN	B001Q9RUFW
Customer Reviews	★★★★☆ ~ 1,453 ratings 4.7 out of 5 stars
Best Sellers Rank	#14,277 in Sports & Outdoors (See Top 100 in Sports & Outdoors) #3 in Baseball & Softball Bat Racks
Date First Available	December 10, 2003

Feedback

Would you like to [tell us about a lower price?](#) ~

https://www.amazon.com/Easton-STIX-PLASTIC-BALL-Ages/dp/B001Q9RUFW/ref=asc_df_B001Q9RUFW?tag=bingshoppinga-20&linkCode=df0&hvadid=80058245652745&hvnetw=o&hvqmt=e&hvbmt=be&hvdev=c&hvlocint=&hvl ocphy=&hvtargid=pla-4583657821993989&psc=1



Easton | PRO STIX PLASTIC
BAT AND BALL SET | All Ages



https://www.amazon.com/Easton-STIX-PLASTIC-BALL-Ages/dp/B001Q9RUFW/ref=asc_df_B001Q9RUFW?tag=bingshoppinga-20&linkCode=df0&hvadid=80058245652745&hvnetw=o&hvqmt=e&hvbmt=be&hvdev=c&hvlocint=&hvl ocphy=&hvtargid=pla-4583657821993989&psc=1

